

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

November 6, 2008

A meeting of the Board of Environmental Protection was held on Thursday, November 6, 2008 at the Holiday Inn / Ground Round, Augusta, Maine. Ernest W. Hilton, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, P. Andrews Nixon, Matt Scott and Lissa Widoff.

Board member Don Guimond departed at approximately 1:30 p.m.

Board member P. Andrews Nixon departed at approximately 2:30p.m.

Absent: Nancy Ziegler

Staff: Hetty Richardson, Bureau of Land and Water Quality
Dennis Merrill, Bureau of Land and Water Quality
Susan Davies, Bureau of Land and Water Quality
David Courtemanch, Bureau of Land and Water Quality
Paula Clark, Bureau of Remediation and Waste Management
Carla Hopkins, Bureau of Remediation and Waste Management

Others: David P. Littell, Commissioner
Nancy Macirowski, Assistant Attorney General
Cindy Bertocci, BEP Executive Analyst
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 4:30 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Commissioner David Littell reported the following:

Red Shield: The Red Shield facility (formerly Georgia Pacific) was purchased by a New York based entity. The Department is currently engaged in meetings with the new owner which will focus on licensing standards and environmental matters that need to be resolved.

Juniper Ridge: Casella Waste Services (the operator) applied for a minor revision to the license issued to State Planning Office associated with operations for the Juniper Ridge Landfill (formerly Old Town Landfill). The Department received 6 requests for a public hearing; three of which requested Board jurisdiction. The Department replied to these requests on October 21st stating that it would hold a public hearing in Old Town to provide an opportunity for public input. However, the application was recently withdrawn by Casella. The Department will provide follow-up correspondence to the requestors updating them on the recent withdrawal.

Board member Elizabeth Ehrenfeld asked if only the minor revision amendment was withdrawn.

Commissioner Littell explained that only the minor revision application was withdrawn. The Commissioner noted that a number of other proceedings were initiated by the individuals who were seeking a public hearing or Board jurisdiction.

Board member Ernest Hilton asked about the status of an expansion proceeding for the Juniper Ridge facility.

The Commissioner remarked that applications for landfill expansions require the entity to pre-file technical data prior to formally filing an application.

Commissioner Littell also noted that, pursuant to statute, a public hearing is required if requested.

B. COMMENTS FROM THE BEP CHAIR: NONE

C. EXECUTIVE ANALYST COMMENTS: Law Court Decisions:

The Hancock County Superior court recently upheld the Board's decision concerning the application of Anthony & Erin Uliano, which denied construction of a private recreational dock in Bar Harbor. It is unknown if an additional appeal will be filed on this matter.

Knox County Superior court upheld the Board's decision on the appeal of a permit issued to Pamela Wendell for the installation of a private driveway and septic system. This was an application for freshwater wetland alteration under the Natural Resources Protection Act (NRPA). The court decision agreed with the Board that septic systems installed in accordance with the standards of the Department of Health and Human Services are exempt from permitting under NRPA. The Court also upheld DEP's decision to process the application under the Tier process as a Tier 1.

D. BOARD CALENDAR: Reviewed

E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING: None

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS

The Board voted (9-0-0-1) on a motion to approve consent agenda items 1, 2, and 3 as presented.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Lissa Widoff, Richard Gould, P. Andrews Nixon, Don Guimond, Ernest Hilton, Sue Lessard and Matt Scott voted to support the motion. Board member Nancy Ziegler was absent.

1. M.W. SEWALL & CO., West Bath – Administrative Consent Agreement (BLWQ – Water)
2. RJ ENERGY SERVICES, INC., Augusta – Administrative Consent Agreement (BRWM)
3. WEBBER TANKS, INC., Bucksport – Administrative Consent Agreement (BAQ)

Board member Ehrenfeld expressed concern that companies that are required to reimburse the State for the cost of cleanups not benefit financially by delaying payment. Commissioner Littell responded that the law was recently changed to allow the State to assess interest on money due at the rate of 15% a year from the date of expenditure. This provision should encourage early reimbursement of funds expended by the State.

III. Regular Agenda

2. CHAPTER 342, SIGNIFICANT GROUNDWATER WELLS / NEW (withdrawal)
Staff: Hetty Richardson, Bureau of Land and Water Quality

The Board voted (9-0-0-1) on a motion to approve the Department's request to withdraw Chapter 342, Significant Groundwater Wells from the rulemaking process. Staff requested withdrawal citing the need to clarify Legislative intent in several areas. This rule proposed to establish a fee structure to fund outside professional review of technical data, and specified public informational meeting requirements and pre-application and pre-submission requirements. The Board voted pursuant to 38 M.R.S. Section 341-D(1-B).

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, P. Andrews Nixon, Matt Scott, and Lissa Widoff voted to support the motion. Board member Nancy Ziegler was absent.

THE BOARD HELD A PUBLIC HEARING AT 10:00 A.M. IN THE MATTER OF:
CHAPTER 555, STANDARDS FOR THE ADDITION OF TRANSPORTED WASTES
TO WASTEWATER TREATMENT FACILITIES // REPEAL AND REPLACE

THE BOARD HELD A PUBLIC HEARING AT 11:30 A.M. IN THE MATTER OF:
CHAPTER 400, GENERAL PROVISIONS // AMENDMENT
CHAPTER 409, PROCESSING FACILITIES // AMENDMENT
CHAPTER 410, COMPOSTING FACILITIES // NEW

THE BOARD RESUMED REVIEW OF ITS REGULAR AGENDA AT APPROXIMATELY 1:00 P.M.

2. 2008 PROPOSED WATER QUALITY RECLASSIFICATION FOR CERTAIN MAINE WATERS (work session)

Staff: Sue Davies and David Courtemanch, Bureau of Land and Water Quality

The Board conducted a work session to review comments received on proposed changes to the classification of certain waterbodies and staff's preliminary responses to those comments. Since the record is closed, the Board did not receive further public comment at the work session. The Board will continue the work session at the November 20th regular meeting, beginning with a review of the Department's draft response to comments associated with the Crooked River and Jepson Brook.

Note: The Board may also continue its review of any of the other waterbodies contained in the 2008 proposed water quality reclassification recommendation.

No vote was taken at the meeting. The Department will bring its final recommendation to the Board for a vote at a future regular meeting.

3. QUODDY BAY LNG and QUODDY BAY PIPELINE LLC / (Withdrawal)

Staff: Cynthia Bertocci, BEP Executive Analyst

The Board voted (7-0-0-3) on a motion to approve the request by Quoddy Bay LNG and Quoddy Bay Pipeline to withdraw its application without prejudice. The Board voted pursuant to 38 M.R.S. Section 341-D(2).

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Ernest Hilton, Sue Lessard, Matt Scott, and Lissa Widoff voted to support the motion. Board members Don Guimond, P. Andrews Nixon and Nancy Ziegler were absent.

4. 2008 LEGISLATIVE REPORT (discussion of issues)

Staff: Cynthia Bertocci, BEP Executive Analyst

The Board discussed the general content of its legislative report, and will review a draft report at a future Board meeting.